



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

August 28, 2013
OM 13-26

Ms. Cynthia Boss

RE: Boss v. Woonsocket Budget Commission

Dear Ms. Boss:

The investigation into your Open Meetings Act (OMA) complaint filed against the Woonsocket Budget Commission ("Commission") is complete. By correspondence dated January 19, 2013, you contend the Commission violated the OMA when it allegedly held a meeting with the Woonsocket School Committee to discuss your job termination, without prior written notice to you. See R.I. Gen. Laws § 42-46-5(a)(1). On February 18, 2013, you supplemented your complaint to allege that the Commission held a meeting (or would hold a meeting) on February 19, 2013 without the requisite forty-eight hours (48) notice as required by the OMA. See R.I. Gen. Laws § 42-46-6(b).

In response to your complaint, we received a substantive response from legal counsel for the Woonsocket Budget Commission, Edmund L. Alves, Jr., Esquire. Attorney Alves states, in pertinent part:

As stated in the WBC's prior responses to Ms. Boss' OMA complaints, R.I.G.L. § 45-9-6(a) provides that budget commissions are subject to the OMA only when meeting to take action on five (5) specific matters.***

Ms. Boss' first allegation is without merit since the WBC never met with the Woonsocket School Committee to discuss her termination.***Even if such a meeting had taken place, it would not be subject to the requirements of the OMA since it is not one of the five (5) matters listed in § 45-9-6(a).

Ms. Boss further alleges that the WBC's February 19, 2013 meeting was not noticed at least forty-eight (48) hours in advance. Again, this meeting was not subject to the OMA since the WBC did not meet to take action on any of the five matters listed in § 45-9-6(a).***The February 19, 2013 closed session minutes

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have not yet been adopted by the WBC, but will be forwarded to you when approved.

Accordingly, the WBC did not violate the OMA since Ms. Boss' latest allegations do not implicate the OMA. The Commission, therefore, respectfully requests that all of Ms. Boss' OMA complaints be denied and dismissed.

In further response to your complaint, we received an affidavit from Ms. Jennifer Findlay, Director of Budget Commission Affairs. Ms. Findlay states, in pertinent part:

2. The Woonsocket Budget Commission has never met with the Woonsocket School Committee to discuss the job termination of Cynthia Boss.

4. The WBC [Woonsocket Budget Commission] did not on February 19, 2013 consider or take action on any matter that was subject to the requirements of the Open Meetings Act in accordance with R.I.G.L. § 45-9-6.¹

We acknowledge receipt of your reply to the Budget Commission's response.²

At the outset, we note that in examining whether a violation of the OMA has occurred, we are mindful that our mandate is not to substitute this Department's independent judgment concerning whether an infraction has occurred or to examine the wisdom of a given statute, but instead, to interpret and enforce the OMA as the General Assembly has written this law and as the Rhode Island Supreme Court has interpreted its provisions. Furthermore, our statutory mandate is limited to determining whether the Budget Commission violated the OMA. See R.I. Gen. Laws § 42-46-8. In other words, we do not write on a blank slate.

¹ You take issue with Ms. Findlay's affidavit, but our ultimate conclusion makes this issue immaterial.

² In your reply, you raise new allegations, some of which were known at the time you filed your February 18, 2013 complaint. See, e.g., MacDougall v. Quonochontaug Central Beach First District, OM 13-24 (declining to review new issues raised in a response). These allegations, including allegations of constitutional rights violations, are outside the scope of the OMA and subsequently, beyond the authority of the Open Government Unit. Please be advised that, by law, this Department represents the State and its agencies, and is provided jurisdiction to enforce certain laws, such as the OMA. As such, in this instance, the Department has authority only to investigate whether the Budget Commission violated the OMA. This Department does not have authority to investigate any constitutional claims you may have or whether any other general laws you reference may have been violated. For all other claims that are not related to the OMA, you may wish to contact a private attorney on those matters.

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Under Rhode Island General Laws § 45-9-6(a), budget commissions are subject to the OMA only when they meet to take action on one or more of five (5) enumerated matters:

The budget commission shall be subject to chapter 42-46 of the general laws 'Open Meetings' when meeting to *take action* on the following matters:

- (1) Levy and assessment of taxes;
- (2) Rulemaking or suspension of rules;
- (3) Adoption of a municipal budget;
- (4) Approval of collective bargaining agreements and amendments to collective bargaining agreements; and
- (5) Making a determination under § 45-9-7 that the powers of the budget commission are insufficient to restore fiscal stability to the city or town. (Emphasis added).

See also Boss v. Woonsocket Budget Commission, OM 13-09. You contend the Commission violated the OMA when it allegedly held a meeting with the Woonsocket School Committee to discuss your job termination, without prior written notice to you. See R.I. Gen. Laws § 42-46-5(a)(1). After careful review of the evidence, including an *in camera* review of the sealed executive session minutes, there is insufficient evidence to establish that the Commission met with the Woonsocket School Committee to discuss your job termination. Further, there is no evidence or argument that the Budget Commission took any action regarding the termination of your employment prior to February 19, 2013, and accordingly, even if the evidence suggested a meeting, as a result of Rhode Island General Laws § 45-9-6(a), the OMA could not apply. Thus, there is no violation.

You also allege that the Commission held a February 19, 2013 meeting without the requisite forty-eight hours (48) notice as required by the OMA. This allegation, however, was contained in a letter to our Department dated February 18, 2013, one day prior to the alleged meeting. See R.I. Gen. Laws § 42-46-6(b). The OMA states that any "aggrieved" person may file a complaint with the Department of the Attorney General. See R.I. Gen. Laws § 42-46-8(a). Since you filed your allegation about the February 19, 2013 meeting the day before it was scheduled to occur, you clearly had personal and/or actual knowledge of the February 19, 2013 meeting, were not aggrieved, and therefore, we find no violation.³

³ In Graziano v. Rhode Island State Lottery Commission, the Rhode Island Supreme Court stated:

It is not unreasonable to require that the person who raises the issue of the defect in notices be in some way disadvantaged or aggrieved by such defect. While attendance at the meeting would not prevent a showing of grievance or

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Although the Attorney General has found no violations, nothing within the OMA prohibits an individual or entity from obtaining legal counsel for the purpose of instituting injunctive or declaratory relief in Superior Court. See R.I. Gen. Laws § 42-46-8. The OMA allows the complainant to file a complaint within ninety (90) days from the date of the Attorney General's closing of the complaint or within one hundred eighty (180) days of the alleged violation, whichever occurs later. R.I. Gen. Laws § 42-46-8. Please be advised that we are closing your file as of the date of this letter.

Very truly yours,



Maria R. Corvese
Special Assistant Attorney General

MRC/ab

Cc: Edmund L. Alves, Jr., Esquire

disadvantage, such as lack of preparation or ability to respond to the issue, no such contention has been set forth in the case at bar. The burden of demonstrating such a grievance is upon the party who seeks to establish standing to object to the notice. See 810 A.2d 215, 222 (R.I. 2002).

Here, you allege that the Woonsocket Budget Commission failed to post notice within forty-eight hours as required under the OMA, but the evidence demonstrates that you had actual notice of the February 19, 2013 meeting. See R.I. Gen. Laws § 42-46-6(b). You do not allege any other grievance or disadvantage. Thus, under Graziano, you are not aggrieved in this instance.